
U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002



DATE ISSUED: July 9, 2001

CASE NO.: 2000-ERA-38

In the Matter of

DAVID A. MITCHELL,
Complainant

v.

MACTEC, INC.,
Respondent

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT**

This proceeding arises under the Energy Reorganization Act of 1974, 42 U.S.C. § 5851, and its implementing regulations found at 29 C.F.R. § 24. On June 20, 2001, the parties submitted a Joint Motion to Approve Settlement Agreement and Stay Proceedings with an attached Settlement and Release Agreement.

Paragraph 13 of the Settlement Agreement provides that the financial terms of the agreement will be treated as confidential commercial information pursuant to 29 C.F.R. § 70.26 and thereby will be subject to non-disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

The parties should note, however, that FOIA requires agencies to release requested documents unless they are exempt from disclosure. *See Bonanno, v. Stone & Weber Engineering Corp.*, 1997-ERA-33 (ARB June 27, 1997), at 2; *Klock v. Tennessee Valley Auth.*, 1995-ERA-20 (ARB May 30, 1996), at 2; *Darr v. Precise Hard Chrome*, 1995-CAA 6 (Sec'y May 9, 1995), at 2. Thus, the ARB and the Secretary of Labor have held that "if an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed." *Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997), at 2; *Corder v. Bechtel Energy Corp.*, 1988-ERA-9 (Sec'y Feb. 9, 1994), at 4.

The Secretary requires that all parties requesting settlement approval of cases arising under environmental protection statutes provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Co.*, 1995-TSC-7 (ARB Dec. 3, 1996), slip op. at 3. Paragraph 11 on page 5 of the Settlement Agreement states that:

The Parties to this matter certify that they have not entered into any agreements settling any other claims arising from the same factual circumstances which form the basis for the claims which Mr. Mitchell has made herein.

I find that there were no other settlement agreements arising from the same factual circumstances which formed the basis of this claim.

After careful consideration, I find that this Settlement Agreement, as so construed, is fair, adequate, and reasonable. *See Bonanno*, 1997-ERA-33 (ARB June 27, 1997).

Accordingly, IT IS HEREBY RECOMMENDED that the Settlement Agreement between Complainant, David A. Mitchell, and Respondent, MACTEC, Inc., be **APPROVED** and the above-captioned matter be **DISMISSED WITH PREJUDICE**. IT IS FURTHER RECOMMENDED that the financial terms of the settlement agreement be designated as confidential commercial information and be handled in accordance with 29 C.F.R. § 70.26.

JOHN M. VITTON
Chief Administrative Law Judge

NOTICE: This Recommended Order Approving Settlement will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. § 24.8 (2000).